

## **Remarks**

### The Section 102 (b) Rejections of Claims 1, 4, 6, 8, and 9

The Examiner has rejected Claims 1, 4, 6, 8, and 9 under 35 U.S.C. § 102 (b) as anticipated by United States Patent No. 5,139,476 to Peters (Peters). Applicant respectfully traverses this rejection and requests reconsideration.

In the first Office Action dated April 25, 2002, the Examiner rejected independent Claim 1 stating that Claim 1 was anticipated by Peters. In his Reply to the first Office Action dated July 25, 2002, Applicant amended Claim 1 to include the limitation: "wherein said central layer is comprised of compressed foam." to differentiate the material claimed in Claim 1 from the material disclosed in Peters. In the Final Office Action dated November 5, 2002 the Examiner maintained the rejection of amended independent Claim 1 as anticipated by Peters. In reply to this continued rejection, applicant submits an affidavit under 37 C.F.R. § 1.132 describing various tests and test results that demonstrate the distinctions between the material disclosed in Peters and the material claimed in amended independent Claim 1 which claims the use of compressed foam in the central layer. The 132 Affidavit is attached as Annex A.

The 132 Affidavit describes three tests for peel strength, stretch and recovery, and porosity. Applicant respectfully notes the results of all three tests confirm that distinct differences exist between the material disclosed in Peters and the material claimed in amended Claim 1. Applicant respectfully requests reconsideration and passage to allowance.

Because Claims 4, 6, 8, and 9 depend from Claim 1 and thereby incorporate all the limitations and distinctions of amended Claim 1, in view of the arguments presented above, Applicant respectfully requests reconsideration of the rejection of Claims 4, 6, 8, and 9 and passage to allowance of those claims.

### The Rejection of Claims 2 and 3 under 35 U.S.C. § 103 (a)

The Examiner has rejected Claims 2 and 3 under 35 U.S.C. § 103 (a) as unpatentable over United States Patent No. 5,139,476 to Peters (Peters). Applicant respectfully traverses these rejections and requests reconsideration.

Applicant courteously notes that Claims 2 and 3 depend from amended independent Claim 1 and thereby incorporate all the limitations of Claim 1. To establish a *prima facie* case of

obviousness under § 103 (a), the cited reference must disclose all the limitations of the rejected claim. In view of the arguments above and the amendments to the claims, Applicant respectfully submits that Peters fails to disclose the use of compressed open cell foam in the central layer of the material, which compressed open cell foam is necessary to achieve the object of the invention to create a neoprene substitute. Therefore, Applicant respectfully requests reconsideration of the rejection of Claims 2 and 3.

Moreover, Applicant respectfully notes that the affidavit submitted under 37 C.F.R. § 1.132 describes comparison tests between the Peters material and the material claimed under amended independent Claim 1 whose findings demonstrate unexpected results. Specifically, the peel strength test demonstrates that the material claimed by Applicant has peel strength over four times greater than the Peters material and a smaller rebound value and greater yield strength than the Peters material as demonstrated by the peel strength test and stretch and recovery test, respectively. Further, the porosity test demonstrates almost a seven-fold difference in porosity between the Peters material and the claimed material. Because Claims 2 and 3 depend from amended independent Claim 1, they incorporate the limitations and unexpected results shown with the claimed material. Applicant respectfully requests reconsideration of the rejection of Claims 2 and 3 and passage to allowance of those claims.

The Examiner has rejected Claim 5 under 35 U.S.C. § 103 (a) as unpatentable over United States Patent No. 5,139,476 to Peters (Peters) in view of United States Patent No. 5,399,306 to Fellows, et al. Applicant respectfully traverses these rejections and requests reconsideration.

Applicant courteously notes that Claim 5 depends from amended independent Claim 1 and thereby incorporates all the limitations of Claim 1. To establish a *prima facie* case of obviousness under § 103 (a), the cited references must disclose all the limitations of the rejected claim. In view of the arguments above and the amendments to the claims, Applicant respectfully submits that Peters fails to disclose the use of compressed open cell foam in the central layer of the material, which compressed open cell foam is necessary to achieve the object of the invention to create a neoprene substitute. Therefore, Applicant respectfully requests reconsideration of the rejection of Claim 5.

Moreover, Applicant respectfully notes that the affidavit submitted under 37 C.F.R. § 1.132 describes comparison tests between the Peters material and the material claimed under amended independent Claim 1 whose findings demonstrate unexpected results. Specifically, the peel strength test demonstrates that the material claimed by Applicant has peel strength over four times greater than the Peters material and a smaller rebound value and greater yield strength than the Peters material as demonstrated by the peel strength test and stretch and recovery test, respectively. Further, the porosity test demonstrates almost a seven-fold difference in porosity between the Peters material and the claimed material. Because Claim 5 depends from amended independent Claim 1, it incorporates the limitations and unexpected results shown with the claimed material. Applicants respectfully request reconsideration of the rejection of Claim 5 and its passage to allowance.

The Examiner has rejected Claims 10-12 under 35 U.S.C. § 103 (a) as unpatentable over United States Patent No. 5,139,476 to Peters (Peters) in view of United States Patent No. 5,900,087 to Chakrabarti, et al (Chakrabarti). Applicant respectfully traverses these rejections and requests reconsideration.

Applicant courteously notes that Claims 10-12 depend from amended independent Claim 1 and thereby incorporate all the limitations of Claim 1. To establish a *prima facie* case of obviousness under § 103 (a), the cited reference must disclose all the limitations of the rejected claim. In view of the arguments above and the amendments to the claims, Applicant respectfully submits that Peters fails to disclose the use of compressed open cell foam in the central layer of the material, which compressed open cell foam is necessary to achieve the object of the invention to create a neoprene substitute. Therefore, Applicant respectfully requests reconsideration of the rejection of Claims 10-12.

Additionally, Applicant respectfully notes that the affidavit submitted under 37 C.F.R. § 1.132 describes comparison tests between the Peters material and the material claimed under amended independent Claim 1 whose findings demonstrate unexpected results. In particular, the peel strength test described in the attached 132 Affidavit describes both the method and results of peel strength testes performed on material disclosed by the Peters patent and the material claimed by Applicant in amended independent Claim 1. This would indicate that the material claimed by

Applicant demonstrates unexpectedly greater peel strength than the Peters material. These results demonstrate much stronger (over four times stronger) peel strength than the Peters material. Further, the test results reveal a smaller rebound value and greater yield strength in the claimed material than the Peters material as demonstrated by stretch and recovery test and a distinct difference in breathability, as shown in the described porosity test. In light of these unexpected test results, Applicant respectfully requests reconsideration of the rejections of Claims 10-12 and the passage to allowance of those claims.

Conclusion

Applicant respectfully submits that all pending claims are now in condition for allowance, which action is courteously requested.

Respectfully submitted,



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